



**North Carolina Department of Health and Human Services  
Division of Mental Health, Developmental Disabilities and Substance Abuse Services**


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Michael F. Easley, Governor  
Carmen Hooker Odom, Secretary

Michael Moseley, Director

June 27, 2005

**TO:** LME Directors  
**FROM:** Mike Moseley   
**RE:** DHHS Incident and Death Reporting Requirements

This memo is to clarify the responsibilities of LMEs and providers of publicly-funded mental health, developmental disabilities, and substance abuse services for reporting and responding to consumer incidents and deaths. It is the responsibility of LMEs to ensure that providers in their catchment area are aware of and comply with the incident response and reporting requirements.

**In order to maintain authorization to provide publicly-funded mh/dd/sa services and good licensure status, a provider must follow the requirements for incident response and reporting** as set forth in 10A NCAC 27G .0600, in accordance with Section 4.5 of NC Session Law 2002-164 (Senate Bill 163) and outlined below. For full details on these requirements, consult the Administrative Code and the *DHHS Incident and Death Reporting Form QM02 and Manual*, which can be found under "Forms" at:  
<http://www.dhhs.state.nc.us/mhddsas/manuals/index.htm>.

Incident and Death Reporting Requirements

NC Administrative Code 10A NCAC 27G .0604, in accordance with Section 4.5 of NC Session Law 2002-164 (Senate Bill 163), requires:

- provider facilities licensed under G.S. 122C, Article 2, except hospitals, and
- community-based providers not requiring State licensure under G.S. 122C, Article 2

to document a level I incident internally and to **"report a level II or level III incident to the area authority or county program responsible for the catchment area where services are provided within 72 hours of the incident... on a form provided by the Secretary."** This Administrative Code also requires the providers noted above to send a copy of all level III incident reports to DHHS within the same timeframe. [Exception: Level III incidents involving deaths that occur within seven (7) days of seclusion or restraint of the consumer must be reported to DHHS immediately, in accordance with 10A NCAC 26C .0303.]

Providers must report incidents that occur while a consumer is under their care. Individuals receiving residential and Assertive Community Treatment Team services are considered under the provider's care 24 hours a day. Individuals receiving day services and periodic services are considered under the provider's care while a staff person is actively engaged in providing a service. [Exception: Providers of periodic and day services are required to submit a report as soon as they learn of any level II or III death, allegation of abuse, neglect, or exploitation, or medication error for a consumer who self-administer medications, even if the



incident occurs when the provider is not actively engaged in providing a service. This report is for notification purposes only.]

**Providers are required to update incident reports “by the end of the next business day... by submitting to the area authority or county program information required on the incident form that was previously unavailable.” Providers are further required to submit, “upon request by the area authority or county program, other information obtained regarding the incident, including:**

- (1) hospital records including confidential information;
- (2) reports by other authorities; and
- (3) the provider’s response to the incident.”

NC Administrative Code 10A NCAC 27G .0601(e) allows for the “area authority, county program, or provider of public services [to] exchange information, including confidential information, when necessary to coordinate and carry out the monitoring functions set forth in this Section.”

#### Incident Response Requirements

Providers must respond to a level I, II or III incident by:

- (1) attending to the health and safety needs of individuals involved in the incident;
- (2) determining the cause of the incident;
- (3) developing and implementing corrective measures;
- (4) developing and implementing measures to prevent similar incidents;
- (5) assigning person(s) to be responsible for implementation of the ... measures; and
- (6) maintaining documentation regarding [these response activities].

In the case of a level III incident that occurs while the client is in the care of a provider or on a provider’s premises, providers are further required to respond to the incident by:

- (1) immediately securing the client record...;
- (2) convening a peer review team within 24 hours of the incident [to]:
  - (A) review the copy of the client record...;
  - (B) gather other information needed; and
  - (C) issue a report concerning the incident to the provider and to the client’s home area authority or county program to facilitate the monitoring of services as required by G.S. 122C-111 and other State statutes; and
- (3) immediately notify the following:
  - (A) the area authority or county program responsible for the catchment area where the services are provided ...;
  - (B) the client’s legal guardian, as applicable; and
  - (C) any other authorities required by law.”

#### Disclosure of Information

The LME is responsible for monitoring the provider’s response to the incident to ensure that the necessary steps have been taken to protect the individuals involved in the incident and to minimize the occurrence of future incidents. **If the LME is unsatisfied with the provider’s response to the incident or has concerns of potential licensure, personnel, or liability issues, the LME may choose to monitor the provider, investigate the incident, or refer the incident to DHHS for investigation. If needed, the LME may request additional information, including confidential information, as authorized by NCGS 122C-25, 122C-112.1, and 143B-139.1 to assist in determining that:**



- provider policies, protocols, and procedures are adequately developed and followed in accordance with state requirements,
- steps are taken to determine the cause of the incident;
- appropriate corrective and preventive measures are implemented and sustained; and
- the incident is addressed in the provider's quality improvement processes.

A level III incident triggers an internal peer review process by the provider, in addition to the LME's review of the provider's response. According to advice the Division has received from a member of the NC Attorney General's Office, the peer review process is intended to be a review by the provider of its internal processes that may contribute to incidents. It is not an internal investigation to determine responsibility for any particular incident. **Other than the report issued to the LME, documents produced by the peer review team, such as minutes or interview notes, are considered part of the provider's internal quality management activities. As such, they are protected from disclosure under NCGS 122C-30, 122C-191, and 122C-192.** These documents do not need to be included in the report to the LME and cannot be requested by the LME during an investigation.

**However, the protected status of the peer review process is not a means of hiding the occurrence of an incident or avoiding other reporting requirements.** The report from the provider's review team to the LME is to assist the LME in its monitoring responsibilities. It must include details of the incident, a summary of the activities undertaken by the provider to respond to the incident, and any corrective or preventive measures that are being put in place.

**Incident reports are considered quality assurance documents and are protected from disclosure, except for purposes of meeting the requirements set forth in statute and rule and discussed above.** A consumer involved in an incident has a right to receive a summary report of an investigation, as set forth in 10A NCAC 27G.0607(d), but a copy of the incident report and identifying information on other consumers must not be included in the report.

cc: Secretary Carmen Hooker Odom  
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